

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

James D. Allen,

Case No. 1:17 CV 2692

Petitioner,

ORDER ADOPTING

-vs-

REPORT AND RECOMMENDATION

Warden Brigham Sloan,

JUDGE JACK ZOUHARY

Respondent.

In 2012, Petitioner *pro se* James Allen was convicted of felonious assault, aggravated vehicular assault, and driving under the influence (Doc. 8-1 at 15). After unsuccessful appeals in Ohio state court (Doc. 15 at 4–7), Allen petitioned this Court for a writ of habeas corpus under 28 U.S.C. § 2254 (Doc. 1).

Allen’s Petition was automatically referred to Magistrate Judge Kathleen Burke under Local Civil Rule 72.2(b)(2) (Non-Doc. Entry 12/27/2017). Respondent filed a Return of Writ and Supplement (Docs. 8, 11), and Allen filed a Traverse (Doc. 14). Judge Burke then issued a Report and Recommendation (R&R), concluding the Petition should be dismissed (Doc. 15 at 1).

This Court reviews *de novo* any portions of an R&R to which a party timely objects. 28 U.S.C. § 636(b)(1). Failure to timely object, however, waives district and appellate court review of the R&R. *See Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995); *United States v. Walters*, 638 F.2d 947, 950 (6th Cir. 1981). This waiver rule has few exceptions. *See Vanwinkle v. United States*, 645 F.3d 365, 371 (6th Cir. 2011); *United States v. 1184 Drycreek*, 174 F.3d 720, 725–26 (6th Cir. 1999).

However, the rule only applies if the parties are notified that failure to object results in waiver. *See Walters*, 638 F.2d at 950.

The R&R notified the parties that failure to object would result in waiver (Doc. 15 at 15). Neither party has objected, and the deadline for objections has passed. This Court therefore adopts the R&R (Doc. 15) in its entirety. The Petition (Doc. 1) is dismissed. There is no basis upon which to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2). Further, an appeal from this Order could not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

October 22, 2019